

Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: Maine Department of Environmental Protection

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

George Seel, Maine Dept. of Environmental Protection, Bureau of Remediation & Waste Management, State House Station 17, Augusta, ME 04333; (207) 28707166; george.j.seel@maine.gov

CHAPTER NUMBER AND RULE TITLE: Chapter 692, Siting of Oil Storage Facilities

STATUTORY AUTHORITY:

Resolve 2011, Chapter 26: Resolve, To Establish a Single Construction Permit for Certain Above Ground Oil Storage Tanks in Gravel Pits and Quarries

PUBLIC HEARING: November 3, 2011 at 09:30 a.m.
Florian Hall (Department of Public Safety Building)
45 Commerce Drive, Augusta, Maine 04330

COMMENT DEADLINE: Nov. 14, 2011

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

This rulemaking is an amendment of the Department's current regulations restricting the siting of new oil storage facilities in environmentally sensitive locations, and more specifically aquifers currently protected for future use as the source of water for public and private drinking water supplies. This amendment is in response to a legislative resolve passed this past session of the Maine Legislature. It would allow for the storage of 1,100 gallons of diesel fuel for fueling heavy equipment used in the mining of sand and gravel from pits located in significant sand and gravel aquifers mapped by the Maine Geological Survey without a currently required variance application to the Department. The objective of rule is to allow such oil storage without significantly increasing the risk of oil contamination of ground water. This rule amendment would also exempt proposed new oil storage facilities on a site erroneously mapped as a significant sand and gravel aquifer, and urban locations where ground water has already been contaminated beyond use as drinking water.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The rule provides a conditional exemption to Department licensed sand and gravel mining operations wishing to develop a new oil above ground storage facility, but only if limited to two above ground tanks with a maximum aggregate storage capacity of 1100 gallons of diesel fuel, installed and operated to industry state of the art standards. No gasoline storage would be allowed because of its greater mobility and toxicity. To be eligible for the exemption, an applicant would submit a written notice and certification of compliance. Such new tanks would also be exempt from determining the ground water yield for the installation location. This approach has been coordinated with the Office of the State Fire Marshal such that only one form is needed to obtain needed approvals from both agencies.

FISCAL IMPACT OF THE RULE:

- **Fiscal Impact to Small Business, Regulated Community and Municipalities:**

Small business. Small mining operations will largely be unaffected by this rule amendment. The rule is tailored for the state's largest mining operators, those often associated with the state's largest construction companies.

Commercial mobile home parks and other similar manufactured home communities, motels, restaurants, convenience stores and other small business development reliant upon sand and gravel aquifers for their public or private drinking water supply wells could be impacted if the rule does not have sufficient safeguards to prevent discharges or for their timely reporting and clean up.

The two added exemptions for erroneously mapped aquifers and urban areas with ground water contamination will expedite the development of oil storage facilities, most often convenience stores or small bulk plants, at a slightly reduced cost.

Regulated community. The regulated community affected by this rule change is the members of the Maine Aggregate Association. Their regulatory costs to allow for the storage of diesel fuel on sand and gravel aquifers will be reduced by a minimum of \$12,000 for each proposed new tank. The cost of engineering and State Fire Marshal Office construction permit preparation will also be significantly reduced.

Municipalities. Provided the safeguards in the rule against oil discharges and the early reporting and clean up of discharges are adequate, towns, water districts and other municipalities, on balance should not be significantly impacted. If a sand and gravel aquifer were contaminated, the fiscal impact would be the value of that ground water or the cost of a remedy. The ground water would be valued in the many millions of dollars. By way of an example, the 557 million gallons of ground water extracted and distributed by the Greater Augusta Utility District each year is estimated to have an economic value of \$1.3 million per year (2008 dollars). Many municipalities now rely on ground water from sand and gravel aquifers for the source of their drinking water supply including Sanford, North Berwick, South Berwick, Kennebunk, Wells, Oxford, Norway, Brunswick/Topsham, Hallowell, Richmond, Farmington, Strong, Mexico, Belfast, Guilford/Sangerville, Old Town, Houlton, Limestone and many others. These same communities will look to those aquifers for their future needs as well. One remedy may be finding and developing an alternate drinking water supply system. For a moderate sized community water system, this cost would be in the \$1.5 to \$4.0 million range (2008 dollars). If feasible, the cost to remediate the contaminated aquifer based on past cases would be approximately in the \$500,000 to multiple million dollar range.

- **Fiscal Impact to State Government (Department or other agencies):**

In the event of a discharge or history of discharges at a mining operation, one effect of the Resolve and this rule amendment would be to transfer the cost of a remedy such as remediation from the oil storage facility owner (the responsible party) largely to the State and the Maine Ground Water Oil Clean Up Fund. Current practice by the mining industry is not to store diesel fuel for their heavy equipment in permanent storage facilities, but to fuel their equipment from peddle trucks. The cost to clean up any resulting oil spills and discharges is the responsibility of the responsible party. Clean up costs for discharges from above ground oil storage tanks is eligible for coverage by the Maine Ground Water Oil Clean up Fund, which serves as “pollution liability insurance” for such facilities. This would result in an increase in financial liability to the Ground Water Fund.

The success of the approach proposed in this rule amendment hinges on the Department’s Bureau of Land and Water Quality mining staff ability to do regular compliance inspection of the new facilities permitted by rule to ensure the conditions of their exemption are met by the mining operation owners. This is an unfunded personnel cost to the Department.

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

Only quantifiable net monetary economic impact would be an approximately \$12,000 in savings to individual members of regulated community.

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

Opponents: Maine Water Utilities Association, Maine Rural Water Association, individual water districts or municipalities relying on aquifers for drinking water, Maine Municipal Association, Natural Resources Council of Maine

Proponents: Maine Aggregate Association, Maine Energy Marketers Association

BENEFITS OF THE RULE: Will allow permanent diesel fuel storage on significant sand and gravel aquifers when needed to mine sand and gravel and will slightly reduce regulatory costs of mining operations and other regulated parties. May reduce risk of oil discharges if substituted for current heavy equipment fueling practices now employed in the mining industry.